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February 14, 2003

**VIA ELECTRONIC DELIVERY**

Mr. William Maher  
Bureau Chief  
Wireline Competition Bureau  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: *Ex Parte*  
CC Docket Nos. 01-338, 96-98, 98-147

Dear Mr. Maher:

On behalf of Broadview Networks, Inc. ("Broadview"), I am writing to provide further information concerning competitive carriers' need for access to unbundled dedicated transport from incumbent LECs ("ILECs"). Specifically, the Commission has been considering a number of tests to determine the conditions under which competitors would not be impaired without access to unbundled transport as a UNE. One prong of some of the tests under consideration takes into account self-provided lit transport as evidence of the feasibility of alternative transport. This letter addresses some concerns with application of a "self-provisioner" prong to unbundled transport.

In our view, the Commission's analysis of self-provisioned transport must include the following additional points:

1. The analysis always must be route-specific.
2. The ILEC must continue to provision unbundled transport as a UNE unless and until a state commission has (i) determined that the conditions on the route demonstrate a lack of impairment and (ii) established a reasonable transition period of at least twelve (12) month for CLECs to migrate to alternative transport arrangements.

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3. A “self-provisioner” must actually be using its own electronics to provide transport on the route and must have sufficient capabilities, including available capacity and available line side terminations, to be a viable non-ILEC source of transport.

4. The test – and all interoffice transport tests—should not apply to DS1 transport or DS1 loop/transport combinations, because impairment in the case of DS1 transport will always be present.

In an *ex parte* letter dated January 24, 2003, Broadview and a number of other CLECs described in detail the concerns that apply to access to dedicated transport. *See* Letter from Steven A. Augustino, Kelley Drye & Warren LLP to William Maher, WCB Docket Nos. 01-338, 96-98 and 98-147, January 24, 2003 (*January 24 Letter*). In the case where a “self-provisioning” prong would apply, then, by definition, actual wholesale alternatives would not exist on the route. As a result, a premature application of a “self-provisioner” prong very likely would leave the CLEC with no practical alternative except to purchase special access from the ILEC. Such an outcome would have a substantial negative impact on Broadview’s ability to utilize the collocations and network facilities it has deployed in an economical manner. Many network facilities could be, in effect, stranded because of the lack of availability of transport at cost-based rates.

If the Commission were to go down a self-provisioning path, Broadview urges the Commission to give meat to the qualifications necessary to count as a “self-provisioner” on a route. Broadview recommends that, in applying a “self-provisioner” prong, a State Commission must determine that all of the requisite number of self-provisioners satisfy the following:

- a) Does the self-provisioner have the capabilities to support wholesale transport requirement (even though it is not actually using them at this time)? For example, a self-provisioner should have sufficient network facilities, appropriate electronics and adequate interconnection facilities to provide wholesale service, should it decide to do so.
  - i. Network – A self-provisioner should have lit multiple strands of fiber (sufficient to provide redundancy and adequate capacity). It should have “spare” facilities over and above that it has deployed to provide service to its own customers. In addition, the self-provisioner’s business plan (target market, typical customer size, typical service types, etc.) should be sufficiently similar to that of a requesting carrier’s such that the deployment provides evidence that deployment could be possible for the requesting carrier as well. A self-provisioner whose network is designed solely to provide service to a large enterprise customer does not provide any probative evidence

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concerning whether self supply is feasible for a carrier seeking to serve small businesses, for example.

- ii. Electronics – A self-provisioner should have deployed electronics that enable lower bandwidth i.e. DS1, DS3 transport to be broken out. If the self-provisioner's electronics only support OC-level circuits, then the presence of such facilities provides no meaningful evidence of feasibility of deployment by other carriers.
  - iii. Terminations – A self-provisioner should have terminations available at DS1 and above level in its collocation cage to sell wholesale transport services. If such terminations were not available, a self-provisioner would have to augment its collocation cage in order to provide service, which diminishes the self-provisioner's potential as a competitor to the ILEC. The only reason that a carrier purchases transport is to ultimately purchase a loop to a customer. If the self-provisioner doesn't have terminations available, then neither the self-provisioner nor another competitor can cross-connect to its cage or to ILEC loops.
- b) Does the self-provisioner have the capability to extend/build facilities into a CLEC's POP/POI. Take for a example a carrier that serves customers via UNE-L. The carrier may have fiber at some of its sites, but it is not in the business of selling and provisioning DS1 and above services on a wholesale basis. This type of self-provisioner does not have the ability to extend fiber into a CLEC's POP/POI. This type of self-provisioner therefore does not provide sufficient evidence of the feasibility of alternative transport, and should not "count" toward a requisite number of self-provisioners on a route.

If the state determines that the above criteria have been met, the CLEC then should have a reasonable transition period (at least twelve (12) months) to transition its services to another provider and or to ILEC's special access offering. If CLEC utilizes the ILEC's special access offering, the ILEC should manage this transition as a records change and no termination liabilities or non-recurring charges should be assessed by the ILEC to the CLEC. If the CLEC transitions to non-ILEC arrangements, transport should continue to be provided at UNE rates until the circuit can be moved in an orderly manner.

Finally, Broadview wishes to emphasize that none of the proposed transport tests should be applied to DS1 level transport. As with DS1 UNEs, the record clearly shows that wholesale providers do not provide DS1 level transport and that it is not feasible to self-

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provision a DS1 facility. As a result, the Commission should find that requesting carriers are impaired, on a nationwide basis, with respect to access to transport at a DS1 (or below) level.

In accordance with Section 1.1206(b), this letter is being filed electronically for inclusion in the docket.

Sincerely,

/s/  
Steven A. Augustino

SAA/pab

ccs: (via email)  
Christopher Libertelli  
Dan Gonzalez  
Jordan Goldstein  
Matt Brill  
Lisa Zaina  
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